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REMARKS

All the pending claims 1-6, 10, 12, 15-24, 27 and 28 are canceled for improper numerical listing thereof. New claims 29-48 are submitted in place of claims 1-6, 10, 12, 15-24, 27 and 28. The texts of the claims 29- 48 are exactly the same as claims 1-6, 10, 12, 15-24, 27 and 28, but only numerical listings of the claims have changed to overcome the objection noted in the Office Action. The listings of the new claims are as follow:

Claim 1 is replaced by claim 29.

Claim 2 is replaced by claim 30.

Claim 3 is replaced by claim 31.

Claim 4 is replaced by claim 32.

Claim 5 is replaced by claim 33.

Claim 6 is replaced by claim 34.

Claims 7-9 were previously canceled.

Claim 10 is replaced by claim 35.

There was no claim 11, since the originally submitted claims were mis-numbered and by this amendment this matter is rectified.

Claim 12 is replaced by claim 36.

Claim 13 and 14 were previously withdrawn.

Claim 15 is replaced by claim 37.

Claim 16 is replaced by claim 38.

Claim 17 is replaced by claim 39.

Claim 18 is replaced by claim 40.

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Claim 19 is replaced by claim 41.

Claim 20 is replaced by claim 42.

Claim 21 is replaced by claim 43.

Claim 22 is replaced by claim 44.

Claim 23 is replaced by claim 45.

Claim 24 is replaced by claim 46.

Claims 25 and 26 were previously withdrawn.

Claim 27 is replaced by claim 47.

Claim 28 is replaced by claim 48.

Favorable reconsideration and allowance are requested in light of the foregoing remarks which follow.

1. Rejection of claims 29 – 34, 35, 36, 37 – 46 and 47 – 48 under 35 USC § 103(a) as being unpatentable over Gibbons et al (U.S. Patent No. 4,888,222).

The Office Action rejects claims 29 – 34, 35, 36, 37 – 46 and 47 – 48 under 35 USC § 103(a) as being unpatentable over Gibbons et al (U.S. Patent No. 4,888,222). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Indeed, both the suggestion and the expectation of success must be found in the prior

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art, not in the Applicant's disclosure. In re Vaeck, 20 USPQ2d 1438 (Fed. Cir. 1988) (emphasis added). The Applicant believes that the Examiner has failed to make a *prima facie* case of obviousness.

The Examiner contends that Gibbons et al discloses a heat-sealable barrier laminate comprising a paperboard substrate, a layer of polyolefin on the second surface, a first layer of polyamide (abuse resistant polymer) on the first surface, a first oxygen barrier on the first polyamide layer, a caulk layer on the barrier layer and a polyolefin applied on the caulk as the innermost product contact layer. However, Gibbons et al neither teaches nor discloses the specific construction of elements (layers) (e), (f), and (g) as recited in the claims 29 and the specific construction of elements (layers) (e), (f), (g), (h), and (i) as recited in the claim 35 of the present invention. The Examiner contends that Gibbons et al discloses the possibility of additional layers (Col. 8, line 34-38) hence, the ordering and addition of the polyamide layer, tie layer, and the EVOH layer is a matter of optimization. In addition, the Examiner interprets Gibbons et al as to disclose a single layer of polyamide against the paperboard and the oxygen barrier layer in direct contact with the polyamide. The Applicants respectfully disagree. The Examiner is reminded that Gibbons et al clearly requires an intervening caulking layer between the polyamide layer and the oxygen barrier (Col. 5, lines 2-9; Figure 1). Moreover, the Examiner contends that the caulking layer of Gibbons et al is the same as the tie layer as recited in the claims 29 and 35 of the present invention. This interpretation is incorrect. Gibbons et al, on column 8, lines 14-33, clearly differentiate between these two materials. The Examiner is reminded that the caulking polymer materials are not equivalent to the tie layer materials.

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In the present invention, the recited elements/layers (h) and (j) of Claim 29 and the recited (j), (k) of claim 35, call for a "tie layer applied directly to the second oxygen barrier layer". The Examiner merely notes that Gibbons et al. disclose "additional layers of abuse resistant polymer, tie layer and oxygen barrier material, and therefore disclose a second layer of polyamide, a first tie layer, a second oxygen barrier layer". There is no disclosure in Gibbons et al. noted by the Examiner which discloses an arrangement of these elements so that they constitute a "tie layer applied to the second oxygen barrier layer" (element (h) of Claim 29) and "a polyolefin layer, applied onto said second tie layer as the innermost and product contact layer" (element (i) of Claim 29). In fact, the Examiner fails to include a "polyolefin layer" in his concluding collection of elements which "therefore disclose "a second layer of polyamide, a first tie layer, and a second oxygen barrier layer".

The Applicants assert that it is important to consider how one skilled in the art would read Gibbons et al and would be motivated to make modifications as defined and recited in the claims 29 and 35 of the present invention. In the Gibbons et al patent, the motivation is to make a foil laminate oxygen barrier and the descriptions of Figures 1-5 all demonstrate foil as the primary oxygen barrier. (For Fig.1, see col. 5, lines 10-11; for Fig.2, see col. 5, lines 35-36; for Fig.3, see col. 5, lines 67-68; for Fig.4, see col. 6, lines 23-24; for Fig. 5, see col. 5, lines 39-40). Furthermore, the data shown in Gibbons et al Table I is for the preferred embodiment (Gibbons Figure 1 with foil barrier). Therefore, Gibbons et al does not provide an apparent basis for concluding a person of ordinary skill in the art would be motivated to modify the cited reference so as to arrive at the claimed invention with a reasonable expectation of success in achieving the

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advantages of the claimed invention. Therefore, this rejection is inappropriate and should be withdrawn.

CONCLUSION

Therefore, Applicants respectfully submit that the independent claims 29 and 35 particularly define and patentably distinguish the present invention over the cited reference. In addition, all of the dependent claims which depend from claims 29 and 35 also define a patentable subject matter. Accordingly, reconsideration of the rejections and allowance of claims 29-48 is earnestly requested. However, should the Examiner have any remaining questions and the attending to of which would expedite such action, the Examiner is invited to contact the undersigned at the telephone number listed below.

A one month extension of time is believed to be required. The Commissioner is authorized to charge any fees associated with this or any other communication, or credit any over payment, to Deposit Account No. 09-0525.

Respectfully submitted,

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